IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1711 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALIULLA INAYATKHAN PATHAN THROUGH MOTHER ZUBEDAKHATUN INAYATKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

#. The detenue - Valiulla Inayatkhan Pathan has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police, Surat City, Surat, in exercise of powers under

Section 3(1) of the PASA Act, dated December 24, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 5 offences registered against the detenue. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of the incidents that occurred on October 20, 1999, November 1, 1999 and November 4, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Mr. N.M. Kapadia, learned advocate for the petitioner has pressed into service the only ground of non-consideration of representation. He has drawn attention of this Court to the fact that the representation was made on behalf of the detenue on March 6, 2000 to the Chief Minister. That representation was made by Zubedakhatun Inayatkhan Pathan. In support of that representation,an affidavit was sworn by Zubedakhatun. By that affidavit, an attempt is made to show that the allegations made by the anonymous witnesses in their statements regarding incidents are not correct. It is contended therein that on inquiry, it is found that no such incident occurred. The said representation was received by the office of the Chief Minister on 7th March, 2000 and it came to be rejected by the government on 9th March, 2000.

#. There is nothing to indicate any exercise having been undertaken to verify whether the affidavit in support of representation is correct or statements of anonymous witnesses are correct etc.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. The question that requires consideration is whether the Government can be said to have considered the representation in its proper perspective. The detenue had a right of making an effective representation guaranteed under the Constitution [Article 22(5)]. It is expected of the Government to afford the detenue an earliest opportunity of making a representation against the order and the very purpose behind providing this right is that the Government may reconsider the decision of detaining the detenue in light of the representation.

The right of making a representation is not given to the detenue for mere mechanical rejection by the appropriate authority without considering the points raised in the representation. No affidavit-in-reply is filed either on behalf of the Government or by the detaining authority and, as is stated in all fairness by the learned Assistant Govt. Pleader, no exercise is undertaken by the Government to ascertain as to whether what is stated in the affidavit is correct or not. No attempt is made to cross-check the contents of the affidavit, particularly when they contradict the statements of anonymous witnesses, which form basis of the order of detention. Making of representation and its consideration by authority concerned is not an empty formality provided by the Constitution. The authority concerned is expected to perform its duty with all seriousness and sincerity at its command. Such mechanical approach in considering the representation would result into rendering the provisions of Article 22(5) as non-existent. Mechanical rejection of representation amounts to denial of right of making a representation guaranteed under the Constitution. This in itself is sufficient to hold that the continued detention is bad in law. The petition therefore, deserves to be allowed on this ground alone.

#. In view of the aforesaid discussion, this petition is allowed. The impugned order of detention dated December 24, 1999 is hereby quashed and set aside. The detenue Valiulla Inayatkhan Pathan is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

*****

pirzada/-